

**Interstate Cigar Co., Inc. and L. S. Amster Co., Inc. and Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local 707, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner**

**Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local 707, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Interstate Cigar Co., Inc. and L. S. Amster Co., Inc.**  
Cases 29-RC-4969 and 29-CB-4210

June 11, 1981

### DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

On February 19, 1981, Administrative Law Judge Raymond P. Green issued the attached Decision in this proceeding. Thereafter, the Charging Party-Employer and the General Counsel filed exceptions and supporting briefs, and Respondent Union filed a brief in answer to the exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

As we have adopted the Administrative Law Judge's recommendation to overrule the Employer's objections to the conduct of the election, we shall certify the Union as representative.<sup>2</sup>

<sup>1</sup> The Charging Party and the General Counsel have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Charging Party has excepted to the Administrative Law Judge's reference to it as "Respondent" in fn. 3 of his Decision. We hereby correct this inadvertent reference.

The Charging Party and the General Counsel have excepted, *inter alia*, to the Administrative Law Judge's failure to find an agency relationship between Respondent Union and the individuals on the picket line and, concomitantly, his failure to find a violation of the Act. Assuming *arguendo* that an agency relationship between the picketers and Respondent Union did exist and, therefore, that Respondent Union was responsible for the conduct of those on the picket line, we find that the conduct found to have occurred is insufficient to establish a violation of Sec. 8(b)(1)(A) of the Act or to justify setting aside the election.

<sup>2</sup> The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally of ballots revealed that, of 113

### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local 707, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the Act, that labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All drivers, warehousemen, maintenance men, porters, and shipping and receiving employees, employed by the Company at its facilities located at 255 and 275 Grand Boulevard, Westbury, New York, and 530 John Street, Hicksville, New York, excluding all salesmen, office clerical employees, guards and supervisors as defined in the Act.

valid ballots, 59 were cast for, and 49 against, the Union. There were five challenged ballots, an insufficient number to affect the outcome.

### DECISION

#### STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge: These consolidated cases were heard by me in Brooklyn, New York, on December 8, 9, and 10, 1980.<sup>1</sup>

The petition in Case 29-RC-4969 was filed by the Union on May 6, 1980, and a Stipulation for Certification Upon Consent Election was approved by the Regional Director for Region 29 on May 20. An election was thereafter held in a unit consisting of all drivers, warehousemen, maintenance men, porters, and shipping and receiving employees employed by Interstate Cigar Co., Inc. and L. S. Amster Co., Inc., at its facilities located at 255 and 275 Grand Boulevard, Westbury, New York, and 530 John Street, Hicksville, New York. Excluded from the unit were all salesmen, office clerical employees, guards and supervisors as defined in the Act. The tally of ballots showed that, of 125 eligible voters and the 108 valid votes counted, there were 59 votes for, and 49 against, the Petitioner.

The five challenged ballots are not sufficient in number to affect the results of the election.

<sup>1</sup> Unless otherwise indicated all dates are in 1980.

A majority of the valid votes counted plus challenged ballots has been cast for Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local 707, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Petitioner and Respondent Union in this proceeding.

On June 19 the Company filed objections to conduct affecting the results of the election, pursuant to which the Regional Director conducted an investigation and issued on August 29, 1980, a Report on Objections, order consolidating cases, and notice of hearing. In substance, the Regional Director overruled two of the three objections filed, and ordered a hearing as to part of Objection 1 which reads as follows:

After the Union filed a petition for representation, Local 707 surrounded the facility with professional pickets. These professional pickets [nonemployees], some of whom were equipped with cameras, took pictures of the employees as they entered the plant, and copied down license plate numbers, intimidated and made threats to employees, and these agents or representatives of Local 707 did otherwise threaten, coerce and intimidate many of the employers' vendors, customers and suppliers, thereby cutting off the supply of work to Interstate employees.

The threats and fear of physical harm and the lack of work created by Local 707's interference with egress and ingress along with Local 707's threats to our suppliers and carriers gave rise to fear of job loss. The situation was further exacerbated because it became known that the Employer was making arrangements to do its work in other facilities and other warehouses in order to meet our customer needs. None of Interstate's or L. S. Amster's employees were on the picket lines at any time relevant herein.<sup>2</sup>

On June 18, the Employer filed a charge in Case 29-CB-4210. On August 14, the Regional Director issued a complaint which was thereafter consolidated with the hearing on the Employer's objections. In essence, the complaint alleges the same conduct which the Employer relies upon to support its objections. In pertinent part the complaint, as amended at the hearing, alleges as follows:

1. That the Union established and maintained a picket line at the Employer's Grand Boulevard facility from about May 27 to about June 11.

2. That on or about May 29, and June 4 and various other unknown dates in May and June, the Union, by various persons acting on its behalf, blocked and attempted to block entrances to and exits from the Company's premises and attempted to prevent employees of the Company from entering and leaving its premises.

3. That on or about May 29 and June 4 and various other unknown dates in May and June, the Union, by James McNeil and others acting on its behalf, photographed and wrote down the license plate numbers of various employees, and in the presence of employees did the same with respect to the cars and vehicles of various company supervisors, agents, and representatives and of trucks making delivery to the Company.

4. That on or about June 4 and 6 and various other unknown dates during May and June, the Union, by various persons acting on its behalf, threatened employees of the Company with bodily injury and other harm to their persons and families.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed, I make the following:

## FINDINGS OF FACT

### I. JURISDICTION

The complaint alleges and the answer, as amended at the hearing, admits as follows:

Interstate Cigar Co., Inc. and L. S. Amster Co., Inc., are New York corporations and affiliated businesses with common officers, owners, and directors which constitute a single integrated business enterprise. During the past year Interstate and L. S. Amster each sold and shipped from their New York facilities products valued in excess of \$50,000 which were shipped in interstate commerce directly to States other than the State of New York. Respondent concedes and I find that Interstate and L. S. Amster, referred to herein as the Company, or the Employer, are engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Accordingly I find that it would effectuate the purposes and the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

It is conceded and I find that the Union, Respondent in Case 29-CB-4210, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES AND OBJECTIONABLE CONDUCT

It is contended that the pickets blocked ingress and egress to the Company's facility. In this respect, the only evidence on this point is that pickets patrolled in a circle in front of the company yard and parking lot and that, on a couple of occasions, vehicles had to wait 5 to 10 seconds for the pickets to pass before entering or leaving the entrance. There is no evidence of any deliberate blocking and the evidence failed utterly to establish that the pickets caused anything more than momentary delays to vehicles when they cleared the entrance to allow cars to pass. I, therefore, shall recommend that paragraph 9

<sup>2</sup> As to this objection, the Regional Director stated: "Inasmuch as the Employer presented no evidence of threats to its vendors, customers and suppliers or of fear of job loss by Employer's employees, nor did the investigation adduce any evidence in support thereof, I shall overrule Objection No. 1 as it relates to these matters."

of the complaint be dismissed and that the Employer's objections be overruled insofar as they allege such conduct.<sup>3</sup>

There are a number of alleged incidents involving threats to employees by people on Respondent Union's picket line. Initially noted is that, in all instances, the identity of the persons making the alleged threats was not established, and there was a failure to establish that any union agents either participated in such conduct or were present when it allegedly occurred.<sup>4</sup> The incidents in question are described below.

According to the testimony of Richard Griffen, an employee who purchased a black T-shirt stating "Vote No" and opposed the Union because of bad experiences he had encountered with other Teamsters unions, he drove into the yard on May 28 whereupon one picket handed him a leaflet and another said, "How are your kids?" The person who allegedly asked about his children was described as being a heavy-set man, with thick hair and being about 5 feet, 9 inches tall. Griffen testified that, on another day during the early hours, while he was working in the yard, an unidentified and undescribed man standing outside the entrance gate called that it would be difficult to wear the shirt if he had two broken legs. Griffen also testified that on another occasion during the early part of the day, some unidentified person at the entrance gate, said that black looked good on him and rhetorically asked how he would like to be buried in it. On yet another occasion, Griffen states that an unidentified person called to him, "Griffen, we'll remember you." Griffen also testified that, on three occasions, as he drove out the entrance, one of the pickets (whom he could not describe) pointed a finger at him and cocked his thumb in a pantomime of a gun. He states that, at another time, when he was driving into the yard, some unidentified person at the entrance gate moved his hand across his throat. On cross-examination, however, Griffen

conceded that, on two of the three occasions when a finger was pointed, the man in question did not point directly at him. He also conceded that the motion of a hand across the throat, in the truck driving trade, is often used to indicate that a driver should stop his vehicle.

As to the above incidents, it is noted that they all occurred either at or near the entrance gate and that during the course of the picketing the Company posted security guards at this location each morning and afternoon. Thus, there was testimony that security guards Dayvis Barrett, Robert O'Brien, and John Bedell were all posted to guard the entrance gate at the times when these incidents allegedly occurred. Yet none of these men corroborated the testimony of Griffen; and John Bedell specifically testified that he never heard any threats. Given the fact that Griffen's testimony regarding the threat to break his legs was that this was yelled to him from outside the entrance gate while he was in the yard, it is hard to imagine how the security guards stationed at the gate would have failed to hear this remark if it had occurred. Equally difficult to credit, in view of lack of corroboration, is Griffen's testimony that certain pickets made threatening gestures to him, as this conduct allegedly occurred at the entrance gate presumably in full view of the security guards stationed there. In short, I do not credit Griffen's testimony which, in any event, related to alleged threats by individuals who were never identified and where there was a complete failure to establish that they were made either by agents of the Union or in their presence.<sup>5</sup>

Dayvis Barrett, a security guard, testified that, on or about May 29 or 30, between 10 and 11 a.m., he heard one of the pickets yell at a truckdriver of another company who was entering the yard, "You can't go in, if you go in there I'll break your ass." Barrett, however, could not identify or even describe the person making this statement and he would not say who the driver was or identify the company which owned the truck.

Barrett further testified that, on or about June 7, he approached some of the pickets who were standing at the entrance gate and pointed a polaroid camera at them. He states that one of the men, described as a heavy man weighing about 260 pounds, zipped down his fly and said, "Take a picture of this." Barrett responded by saying, "Take a picture of what, there's nothing to take a picture of." This comment, not surprisingly, induced a further response in kind from the man. At this point, according to Barrett, the man came over to him and said "he would kick my ass." Barrett states that, later in the day, a man named Ralph (apparently Union Agent Ralph Alimena) came over to him and apologized, saying he would see that it did not happen again. Robert O'Brien,

<sup>3</sup> To the extent that witnesses called by the General Counsel testified that pickets asked the drivers of trucks making delivery to Respondent to honor the picket line, this is not violative of Sec. 8(b)(1)(A) of the Act. On the contrary, such conduct is merely incidental to primary picketing activity which is permitted under the Act.

One witness, Michael Waldeck, testified to an incident wherein he was cursed at as he drove his car through the entrance and a picket spit on the ground as he passed. He also testified that later in the same day, as he drove through the entrance with his supervisor, one of the pickets yelled an obscenity. Neither incident, however, involved threatening statements or actions. They are therefore not viewed as violative of the Act. *Firestone Textiles Company, Division of the Firestone Tire & Rubber Company*, 244 NLRB 160 (1979).

<sup>4</sup> On the question of agency, the Board in *Dover Corporation, Norris Division*, 211 NLRB 955, 957, fn. 3 (1974), concluded that "when as here, there have been repeated incidents of alleged misconduct, some of which have been observed by a union agent, the union cannot be heard to plead its lack of knowledge or participation. In fact in instances where there have been repeated outbreaks of misconduct not participated in or even observed by the union but the union has failed to take steps to halt further outbreaks of such misconduct, union liability has been found." The Board also stated, however, that the presence or absence of a union agent may be crucial in cases involving isolated instances of misconduct. I note that, prior to the filing of the instant charge on June 18, the evidence fails to establish that the Company either advised the Union of any alleged misconduct or that it sought the assistance of local police authorities in connection with the conduct which is alleged to have commenced at or near the start of the picketing on May 27. Accordingly, Union President Louis Alimena credibly testified that he never received any notice of such alleged misconduct.

<sup>5</sup> A witness called by the General Counsel, Eugene Maney, was a person who participated in the picketing. He testified that he picketed at least some part of every day from its commencement to its conclusion. He also testified that he never heard any threats made to anyone. Also, in affidavits of James McNeil and Ralph Alimena, which were introduced into evidence by the General Counsel, these two persons, who conceded they are agents of the Union, stated that they were present at the picket line for substantial periods of time and that no threats were ever made by the pickets.

another security guard, testified that he witnessed this incident and he described the man in question as being a heavy-set man who wore glasses and had grayish hair.<sup>6</sup> According to O'Brien, after the give-and-take between Barrett and the man over whether there was sufficient matter worthy to photograph, the man approached Barrett and said, if he wanted to start something, he (Barrett) should go ahead. He also testified that Barrett's response was that, if the man punched him, he would be in trouble. According to O'Brien, the pickets then called the man away and he left without further incident.

O'Brien testified that he too was involved in an incident with the pickets on or about June 2. He states that on this occasion he saw some of the pickets go over to a coffee truck parked outside the plant premises and he told them to leave since they were on private property. In this respect, it does not appear that the location of the parked coffee truck was clearly demarcated as private property and that pedestrians did, at times, walk by the area in question. In any event, O'Brien testified that one of the pickets, described as having dark hair, a dark complexion, and a bent nose, asked him what would happen if the pickets did not leave. O'Brien states he told the man that he would call the police and that he then proceeded to walk toward the building. According to O'Brien, he turned around, again asked the man to leave, whereupon the man said that if O'Brien touched him he would break O'Brien's arm. O'Brien concedes that he was waving his arms while ordering the man to leave, but asserts that he was not doing so in a threatening manner. At this point, according to O'Brien, Barrett came over and said he had an agreement with Ralph that the pickets were not supposed to be on company property, whereupon the man said, "If you ask me nicely, I'll leave."

Barrett's version of the above-described incident was that on or about June 10 he heard O'Brien telling the pickets at the coffee truck that they were on private property. He states that O'Brien was talking to a well-dressed man about 53 years old with black hair who was about 6 feet tall and who had a camera. According to Barrett, this man came over to him and said that Barrett was a "nice guy" and that if he asked him to leave, he would, but that if the other guard (O'Brien) raised his arm at him again, he would break it. However, Barrett's version of this incident, as described in his pretrial affidavit, was as follows:

I walked over to the truck. As I was walking, I heard one of the pickets, the one with the camera, yelling at O'Brien and asking him why he could not have coffee. O'Brien said he had to leave the property. I did not hear him say anything to O'Brien about breaking his arm or otherwise harming him. When I got to the truck, I told them to leave and told them that Ralph had agreed that they would not come over to the coffee truck.

<sup>6</sup> O'Brien testified that this man was the third from the left in a photograph received in evidence as G.C. Exh. 4a. However, no one could state who this man was and there is no evidence to indicate that he is an officer or agent of the Union. I note that the photograph itself was exceptionally unclear.

Regarding the two incidents described above by Barrett and O'Brien, it seems to me that their respective versions are substantially at variance. As to the coffee truck incident, O'Brien testified that a man threatened to break his arm and Barrett testified that this man indicated to him that he would do so if O'Brien raised his arm to him again.<sup>7</sup> However, Barrett's description of this event in his pretrial affidavit was completely contradictory. As to the camera incident, while Barrett testified that an explicit threat of physical harm was made to him, O'Brien's testimony was that, after some lively bantering between Barrett and the man in question, the man stated that, if Barrett wanted to start something, he should go ahead. Thus, in O'Brien's version, the unidentified man did not make the explicit threat as described by Barrett.

It is my opinion that the testimony of Barrett and O'Brien regarding the two incidents described above is too unreliable to support a contention that the Union violated the Act or engaged in conduct which should serve to set aside the election. It is my conclusion that, at most, a minor altercation with an unidentified person occurred when Barrett went out to photograph the pickets which resulted in a bit of ribald byplay. As to the coffee truck incident, I do not believe that O'Brien was actually threatened. Moreover, given the inconsistency between Barrett's testimony and his pretrial affidavit on the coffee truck incident, and based on my observation of his demeanor generally, I do not credit Barrett's testimony regarding the alleged threat made by some unidentified person to an unknown truckdriver on May 29 or 30.

It is also contended that Lisa Gaines, a supervisory employee, was threatened and that security guard John Bedell was assaulted. In both cases, it is my conclusion that the evidence fails to support these contentions. As to Lisa Gaines, her testimony was that, on a day during the week of June 2, a person whom she could neither identify nor describe told her in the morning that he would wait for her at the entrance at 5 p.m.<sup>8</sup> She also testified that, when she left work that day, someone told her that he knew where she lived, and knew what her father did for a living. (Her father is a police officer.) She states that she responded by telling the man that he could call her father at the station house whereupon she got into her car and drove away. No one else was present during this alleged incident.

The incident described by John Bedell, a security guard, may fairly be described as being trivial from his own description. In this regard, he testified that he was directed by his superior to go over to a United Parcel Service truck and to tell the driver that the Company was not on strike. He states that he did so, whereupon a man who was 5 feet 7 inches tall and had a big belly came over and told him to get off the street. Bedell asserts that at this point the man pushed his belly against him. Bedell testified that the man in question was the far-

<sup>7</sup> From their respective descriptions, it is not clear to me that Barrett and O'Brien were describing the same person.

<sup>8</sup> Parenthetically noted is that Gaines is an attractive young woman and Respondent's counsel seemed to suggest, in his cross-examination of her, that the man was interested in meeting her after work for social reasons.

thet from the right in the photograph received as General Counsel's Exhibit 4a. This person was later identified by Maney as being Michael Morris, a union business agent. Whatever may be said of this incident, it is clear to me that it can hardly be described as an assault. As noted above, it is my conclusion that the incident was trivial in nature and there is no evidence that any bargaining unit employees witnessed the event.

The General Counsel and the Employer allege that the pickets, on a number of occasions, photographed employees and trucks as they entered or exited the premises. They also assert that the pickets wrote down license plate numbers of employees' cars and the plate numbers of common carriers as they came to or left the facility. In this respect, Barrett testified that, on or about June 2 between 7:30 and 8 a.m., he saw a tall well-dressed picket, who was about 38 years old, take pictures of employees as they drove their cars through the entrance gate.<sup>9</sup> He testified that he saw this man aim his camera at the back of their cars and also saw him taking pictures of common carriers entering and leaving the premises. He states that on one occasion he overheard one of the pickets say that they would check out a truckdriver, who was unidentified, to see if he belonged to a union and get his "ass fired." Barrett further testified that on one occasion he saw the tall man writing on a pad as common carriers went into the yard.

John Bedell testified that on one occasion around June 2, he saw a man with a camera who took pictures of various truckdrivers as they entered the yard during the morning.<sup>10</sup> He asserted that three of the drivers who were photographed were employees of the Company and he gave their names. However, none of these men was called to corroborate Bedell's testimony that their pictures were taken. Bedell also testified that, on another occasion, during the week of June 5 and during the hours from 8 to 8:30 a.m., he saw an unidentified man who appeared to write something on a pad of paper as cars went through the entrance gate. He could not, however, identify any of the drivers and he could not identify the man with the pad. In connection with these assertions, Robert O'Brien, who, as noted above, was stationed at the entrance gate throughout the picketing from 8 to 10 a.m. and from 2 to 5 p.m., testified that he never saw any of the pickets with cameras and never saw anyone write down the license plate numbers of any employees. At most, he claims that he did see an unidentified person appear to copy down license plate numbers of common carriers as they passed through the entrance gate.

Thomas Dolise, the receiving manager and a supervisory employee, testified that, on one unspecified occasion, he saw an unidentified picket look at his license plate as he drove by and that this man wrote something on a pad of paper. Dolise could not, however, describe the man, and it does not appear that any other employees were present when this allegedly occurred. Similarly, Lisa Gaines, who was a supervisor during the time of the picketing, asserts that, during the week of June 2, when

she went out to lunch with a clerical employee, one of the pickets had a camera and asked if he could take her picture. She described the man as being in his early 30's, about 5 feet, 8 inches, with dark hair. Her testimony was that she thought she heard the camera click and she also testified that, when she got into her car, two of the pickets came over, sat on her car while talking to her, and got off when she told them she was going to drive off. Also, Joan Choules, an executive secretary, testified that, on one occasion, she was in her car by herself when she heard the sound of a camera, which she described as a whirring noise. She states that, when she looked up, she saw a bald man with a big belly and dark red glasses, holding a Mamiya camera. According to Choules, when she heard the sound, she made an obscene gesture and told the man, "If you want to take a picture, take a picture of this." She states that this was the only time she saw a camera during the course of the picketing.<sup>11</sup>

Eugene Maney, the picketer who was called by the General Counsel to testify, asserted that he was present every day at the picket line which was usually manned by four to eight people who had volunteered to picket. He states that Ralph Alimena, a business agent, was in charge of the picketing, although in his absence other union business agents took control.<sup>12</sup> According to Maney, Ralph Alimena told the pickets that they were there as gentlemen and that they should maintain themselves so as not to antagonize any of the employees. Maney testified that he never saw any of the pickets ever carry or use cameras, that he never saw any pickets write down license plate numbers, that he never saw threatening gestures made, and that he never heard threatening remarks made by the pickets to anyone. He specifically denied that the pickets ever threatened to break anyone's legs or ass, or make any threats to a person who wore a "Vote No" T-shirt (Griffen). He further denied that the pickets, in any way, prevented or attempted to prevent vehicles from entering or leaving the Employer's premises.

I am unpersuaded by the record as a whole that the General Counsel has established that Respondent Union, by its agents, has engaged in any conduct violative of the Act. In relation to the allegations that pickets photographed people or wrote down license plate numbers, it is evident that, if this occurred at all, it happened on a few isolated occasions and was carried out by persons unknown.<sup>13</sup> Moreover, the photographing of employees

<sup>11</sup> According to Choules, she arrives at work generally at or about 7:20 or 7:35 a.m. and leaves at 5 p.m. She also states that she goes to lunch either at noon or 1 p.m.

<sup>12</sup> Such as Michael Morris, Tony Simone, and James McNeil.

<sup>13</sup> I credit the testimony of Eugene Maney not only because he appeared to be a candid and forthright witness, but also because security guard O'Brien conceded that he never saw any pickets carry or use cameras. Thus, according to O'Brien's testimony, he was stationed at the entrance gate during the course of the picketing and therefore was in a position to observe what happened. Also, it is significant to me that, although Bedell asserted that he observed a picketer taking pictures of three employees as they drove company trucks through the entrance gate, the three men in question were not called to corroborate his testimony on this point. Further, I was not impressed with the reliability of Barrett's testimony in general.

<sup>9</sup> Most employees enter about 7:30 a.m.

<sup>10</sup> He identified the man as being the third from the left in the photograph in evidence as G.C. Exh. 4a.

by pickets, or the recording of license plate numbers, is not by itself violative of Section 8(b)(1)(A) of the Act. It is only when such conduct takes place in conjunction with other actions indicating that a union might react adversely to employees who honor a picket line that such conduct exceeds the boundaries of permissible action. *Dover Corporation, Norris Division*, 211 NLRB at 958. In the instant case there is a singular lack of credible evidence that employees were threatened, much less threatened because they passed through the picket line. Indeed it is apparent that the Union set up this picket line, manned by people who were not employed by the Company, for essentially organizational purposes and that it did not elicit a strike by the Company's employees.

#### IV. CONCLUDED FINDINGS

Based on the record as a whole it is concluded that the evidence herein fails to establish that Respondent Union engaged in any conduct in violation of Section 8(b)(1)(A) of the Act or that it has engaged in conduct which interfered with the results of the election. I therefore shall recommend that the complaint be dismissed in its entirety and that the objections be overruled. Accordingly, as the Union received a majority of the valid votes counted, it further is recommended that the Union be certified as the exclusive collective-bargaining representative in the unit of employees who voted in the election.

#### CONCLUSIONS OF LAW

1. Interstate Cigar Co., Inc. and L. S. Amster Co., Inc., are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local 707, International Brotherhood

of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Union has not engaged in any conduct as alleged in the complaint as being in violation of the Act.

4. Respondent Union has not engaged in any conduct pursuant to which the election held on June 13, 1980, should be set aside.

Based on the entire record in this proceeding, I hereby shall make the following recommended:

#### ORDER<sup>14</sup>

It hereby is ordered that the complaint be dismissed in its entirety.

IT IS FURTHER ORDERED that the Employer's objections to the election be overruled and that the Union be certified as the exclusive collective-bargaining representative of the employees of Interstate Cigar Co., Inc. and L. S. Amster Co., Inc., in the following appropriate unit:

All drivers, warehousemen, maintenance men, porters, and shipping and receiving employees, employed by the Company at its facilities located at 255 and 275 Grand Boulevard, Westbury, New York, and 530 John Street, Hicksville, New York, excluding all salesmen, office clerical employees, guards and supervisors as defined in the Act.

<sup>14</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.